



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

JMK:AES/DCP/DKK
F.#2014R00501

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September 12, 2017

By Hand and ECF

Honorable Kiyo A. Matsumoto
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: United States v. Evan Greebel
Criminal Docket No. 15-637 (KAM)

Dear Judge Matsumoto:

As discussed with defense counsel during meet-and-confers in August, as well as in the government's pre-trial motion to preclude certain testimony noticed by the defendant as expert testimony and reply memorandum in further support of that motion, the government intends to challenge certain purported expert testimony proffered by the defendant pursuant to Daubert and its progeny. (See ECF Dkt. Nos. 329 at 40-41, 348 at 49.) Therefore, the government respectfully requests that the Court set a briefing schedule and hearing date for any such challenges. Specifically, the government respectfully proposes the following schedule: the defendant will provide to the government all necessary supplemental disclosures by September 18, 2017;¹ any Daubert motions are due on September 22, 2017; responses are due on October 2, 2017; replies are due on October 5, 2017; and any hearing will be conducted during the week of October 10, 2017.

The defendant has advised that he objects to the government's proposed schedule for two reasons. First, the defendant does not agree that there is a need for a Daubert hearing in connection with some or all of the proffered expert testimony. Second,

¹ On Thursday, September 7, 2017, the government requested that the defendant provide by September 18, 2017 supplemental disclosures related to its proffered experts, including requests related to written reports or analyses conducted by those experts. In addition to being required by Federal Rule of Criminal Procedure 16, these supplemental disclosures may resolve certain potential challenges and/or identify additional areas of dispute. A copy of those supplemental requests is attached as Exhibit A to this letter.

the defendant believes that the schedule proposed by the government would require Daubert issues to be briefed too far in advance of trial. It is the government's understanding that the defendant is willing to provide certain supplemental disclosures on or about September 28, 2017, and would request that the Court set a schedule for briefing Daubert challenges at the October 3, 2017 status conference and after the Court has ruled on the government's motions to preclude certain expert testimony on relevance grounds. However, it is also the government's understanding that the defendant does not intend to finalize disclosures for certain experts prior to the completion of the government's case-in-chief (see Defendant's Opposition to the Government's Motions in Limine at page 51 (ECF Dkt. No. 347)), such that the defendant's schedule for addressing Daubert challenges would result in some briefing and/or hearings to take place during the trial itself.

The government respectfully submits that its proposed schedule would allow the parties and the Court to resolve Daubert challenges in advance of trial in order to avoid unnecessary uncertainty about legal and factual issues in the case and in order to avoid wasting the jury's time in the middle of the trial, which is scheduled to start on October 16, 2017 (less than two weeks after the pre-trial status conference).

Respectfully submitted,

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Enclosure

cc: All counsel (via ECF)